IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 2331 of 2003.
Date of Decision : 21.10.2009.

Satish Kumar

.....Petitioner.

Versus

State of Haryana .....Respondent

CORAM : HON'BLE MR. JUSTICE NAWAB SINGH

Present: Mr. A.S. Virk, Advocate,
for the petitioner.

Mr. S.S. Goripuria, DAG Haryana,
for the respondent-State.

NAWAB SINGH J.

This revision is directed against the judgment dated November 13th, 2003 passed by Additional Sessions Judge, Kurukshetra, whereby, the judgment of conviction and order of sentence dated November 13th, 1998 of Judicial Magistrate First Class, Kurukshetra was upheld and the petitioner was convicted under Section 457 of Indian Penal Code and sentenced to undergo RI for two years and to pay a fine of Rs.1000/- and in default of payment of fine, to undergo RI for one month.

2. The factual background in a nutshell is as follows:-

On the night intervening February 3rd/4th, 1995 J.K. Jain was sleeping in his house No. C-I/18 situated on the campus of Kurukshetra University, Kurukshetra. Petitioner entered the house. Daughter of R.P. Sharma-complainant, a neighbour of J.K. Jain heard a thud indicating some person had trespassed into the house of J.K. Jain. Neighbours woke up and apprehended the petitioner.

3. At the outset, learned counsel for the petitioner has stated that he does not challenge the judgment of conviction on merits but only prays for releasing the petitioner on probation. It has been submitted in support thereof that the prosecution have

failed to prove the presence of the petitioner in the house for a purpose other than that of committing of any other offence punishable with imprisonment as described in Section 457 IPC. Even if the prosecution story is accepted, that itself does not constitute the ingredient of Section 457 IPC. The only offence made out against the petitioner was that he committed simple lurking house trespass, an act punishable under Section 453 IPC. The petitioner is a first offender, is serving in the same University in which J.K. Jain is serving, has faced the agony of protracted trial for a long period of 14 years and is the only bread earner of the family.

3. In view of this, this Court is of the opinion that it would be expedient and in the interest of justice to release the petitioner on probation.

4. Thus, the petitioner is directed to be released on probation for a period of one year under Section 4 of the Probation of Offenders Act on his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount for the said period for keeping peace and be of good behaviour to the satisfaction of Chief Judicial Magistrate, Kurukshetra.

5. The revision petition is disposed of accordingly.

(NAWAB SINGH)
JUDGE

21.10.2009.
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